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10/802,456	03/18/2004	Stephen Bennett Elliott		4015

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Stephen Bennett Elliott
702 Buffalo Springs Drive
Allen, TX 75013

EXAMINER

LUSTUSKY, SARA

ART UNIT	PAPER NUMBER
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3735

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/802,456	Applicant(s) ELLIOTT, STEPHEN BENNETT	
	Examiner Sara Lustusky	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/22/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: figures 6-8 are missing from the "Brief Description of the Drawing Figures" on page 4; the recitation "5 basic methods" on page 6, which is in reference to Figure 2, should read - - 6 basic methods - - as there are six methods illustrated in Figure 2 (2A-2F).

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "1B" has been used to designate both the inhalation/exhalation diagram showing time intervals and the inhalation/exhalation diagram showing visual indicators.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "1C" is missing from Figure 1, as mentioned on page 5 of the Specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the

changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-20 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly

and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Alternatively, the method steps that go into making up the method or process must be clearly and positively specified. The method or process should be defined using active, positive steps delimiting how the method or process is actually practiced. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 1, 6, 14, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: measurement of each practitioner's internal perception of the method steps. In view of the limitation "progression of the phase relative to the internal perception of the practitioner", the internal perception must be determined in order to present a comparison.

Claim 7 recites the limitation "the 5.9 second interval" in line 3. There is insufficient antecedent basis for this limitation in the claim. There is no 5.9 second interval disclosed in the claims prior to this recitation.

Claim 8 recites the limitation "the 5.9 second interval" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no 5.9 second interval disclosed in the claims prior to this recitation.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: how the number 7 is to be employed. The limitation "employed consistently between both audible and visual

representations" indicates that the number 7 is neither an audible nor a visual representation. It is unclear how the number 7 is employed if it is neither audibly nor visually employed.

Claim 18 recites the limitation "visual indicators oriented around the number 7" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no "number 7" mentioned in claim 1 or 18 prior to this recitation.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: how the limitation "frequency and number", in lines 2 and 3, is incorporated into the method of claim 1. Neither the frequency nor number has been defined in reference to the method of claim 1. One of ordinary skill in the art at the time of the invention would not know how alter their inhalation or exhalation in view of the undefined frequency or number.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 6, 14, 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These methods positively claim the "internal perception of the practitioner" as part of a method step. Internal perception is part of the human psyche and is part of the human body. The human body and body parts are non-statutory subject matter and cannot be positively recited.

Claim Rejections - 35 USC § 102

For the purpose of expediting the examination process, the examiner is applying the prior art of record to the best of her abilities in view of the 112-second paragraph rejections described above.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreiber (Patent 6212135 B1).

Schreiber teaches a method of using audible and visual indicators to communicate inhalation and exhalation phases of breathing, changes of said phases, progression of said phases in time, and progression of said phases (as described in lines 48-67 of column 2), which has been known for centuries in Eastern philosophy to reverse high blood pressure and heart rates (as described in lines 13-21 of column 1); wherein the audible indicators may be in the form of a tone or musical score which is frequency modulated to transition from a high pitch to a low pitch and from a low pitch to a high pitch (as described in the embodiment in lines 23-27 of column 7) or may be a pulsed tone (as described in an alternative embodiment in lines 32-35 of column 7); wherein the audible signal may also be in the form of a rapid attack and gradual decay

as indicated in one embodiment by the short inhalation cue time and longer exhalation cue time (as described in lines 44-47 of column 8) (as seen in Figure 3); wherein visual indicators comprise lights which increase in number to indicate inhalation and decrease in number to indicate exhalation (as described in lines 56-66 of column 5 and in lines 10-12 and 32-44 of column 6); wherein the non-limiting range of 1-16 breathing cycles, (or inhalation-exhalation cycles), per minute are capable of being performed; wherein the user may separately define the duration of the inhalation and exhalation indications.

Claims 1, 3-4, 6, 13 are rejected under 35 U.S.C. 102 (b) as being unpatentable over Fresquez et al. (Patent 4711585).

Fresquez et al. teaches a method of presenting timed audible indicators and/or visual indicators to communicate inhalation and exhalation phases to synchronize the breathing pattern of a user, the pattern of which is commonly known in the art to correlate to heart rate, the regulation of which can cause a subsequent heart rate response.

Claims 1, 2 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourne et al. (GB 2344288 A).

Bourne et al. teaches a method of presenting timed audible indicators synchronized with visual indicators to communicate inhalation and exhalation phases to a user, the pattern of which is commonly known in the art to correlate to heart rate and the regulation of which can cause a subsequent heart rate response (as described in

lines 5-14 of page 1). Furthermore, Borne et al. teaches the use of music to convey breathing cues to a user (as seen in Figures 2a-2d and described in lines 9-11 on page 5) wherein both music and colors work together to indicate when to change from inhalation to exhalation, wherein 7 colors (red, orange, yellow, green, blue, indigo, and purple) are used sequentially as a visual indicator and stimulus (as described in lines 15-20 on page 1 and in the table on pages 1 and 2), and that the system may be controlled by the user, or controlled by a control unit wherein the user may select a predefined program or set their own (as described by the embodiments in pages 9-14).

Claims 1 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Khalsa (PGPUB 2002/0051958 A1).

Khalsa teaches a method of presenting timed audible and visual cues for synchronizing the breathing cycle reference, wherein these cues may be employed in a group setting and/or a "wide area" group setting (as described in the abstract) (as described in paragraphs [0093]-[0095]), wherein the audible cues are incorporated into mantra repetition for purposes of synchronizing the breathing cycle (as seen in Figures 1, 2, 5C-F, 5P, 8B-D, 8H).

Claim Rejections - 35 USC § 103

For the purpose of expediting the examination process, the examiner is applying the prior art of record to the best of her abilities in view of the 112-second paragraph rejections described above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber (Patent 6212135 B1) in view of Constable (Patent 1953954).

Schreiber teaches the method of claim 1, as described above, comprising using audible and visual indicators to communicate inhalation and exhalation phases of breathing, changes of said phases, progression of said phases in time, and progression of said phases. While Schreiber teaches that any visual indicator capable of conveying the desired visual signals can be used with the method (as described in lines 10-12 of column 6), Schreiber does not expressly teach that the visual indicator comprises 13 segments.

Constable teaches the use of a visual indicator to elicit a response from a viewer, the visual indicator comprising 13 segments (as described in lines 78-81) (as seen in Figures 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a visual indicator similar to that of Constable with the method of Schreiber as a design choice merely substituting one known indicator for another that is equally effective in conveying the same visual indications to a viewer.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashman (GB 2381642 A) in view of DeBrouse (Patent 6397106 B1).

Ashman teaches a method of reducing stress using visual cues synchronized with audible cues for practicing meditation on chakra colors (as seen in Figure 1) (as described in lines 5-6 and 19-22 of the abstract, and in claims 1-3).

DeBrouse teaches that there are 7 chakras, which are sequentially associated with a specific color and tone (as described in Table 1 in column 11, and Table 2 in column 12).

It would have been commonly known to one of ordinary skill in the art at the time of the invention that chakra colors are part of the yoga tradition which is a system of exercise, breathing, and meditation that has been known for thousands of years. It would have been known to one of ordinary skill in the art at the time of the invention that in yogic teachings, each tone is associated with a mantra. Furthermore, as described in an article by Bernardi et al. (*BMJ* 2001;323;1445-1449), in some yogic practices mantras are recited during breathing cycles in which each breathing cycle lasts for approximately 10 seconds (as described in lines 1-4 of the discussion section of Bernardi et al.). Furthermore, it would have been obvious that this time period would vary depending on the style of yoga, the instructor, etc. During the examination process the examiner felt that the applicant did not give sufficient reason for the specific duration of each induced breathing cycle.

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to use a device similar to that taught by Ashman with the method

of practicing ancient yogic breathing that has been known for thousands of years, using chakras and their associated colors and tones as described by DeBrouse, wherein the tone or music and light would be programmed to last for a time sufficient to say each associated mantra.

Allowable Subject Matter

Claims 8, 15-17 and 20 are objected to as being dependent upon a rejected base claim, but apparently would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 8 is believed to be allowable over the prior art because none of the prior art of record shows a method of counting numbers 1 through 7 to denote inhalation or a method of counting numbers 7 through 1 to denote exhalation.

Claim 15 is believed to be allowable over the prior art because none of the prior art of record shows a method of synchronizing breathing cycles with an external timing reference employing circular visual indicator with 7 sectors.

Claim 16 is believed to be allowable over the prior art because none of the prior art of record shows a method of employing a 14 stage vertically oriented elliptical visual indicator to synchronize the heart rate variability cycle with the breathing cycle of an individual.

Claim 17 is believed to be allowable over the prior art because none of the prior art of record shows a method of employing the number 7 during a breathing exercise.

Claim 20 is believed to be allowable over the prior art because none of the prior art of record shows the shortening or lengthening of the tempo of musical recordings to intervals of 5.9 seconds for purposes of synchronizing the heart rate variability cycle with the breathing cycle of a subject.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Haase (PGPUB 2004/0148575 A1) describes a 7 sector visual indicator in which colors represent specific tones and where the visual display matches the meter of a musical composition. Sandborn et al. (PGPUB 2002/0176591 A1) teaches a method of correlating the color spectrum to sound waves. Rogers (Patent 5734795) teaches a method of allowing a person to experience Eastern philosophy through visual and audible indicators and yogic breathing exercises, including mantras (lines 51-67 of column 28).

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon

skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Lustusky whose telephone number is (571) 272 8965. The examiner can normally be reached on M-F: 9 - 5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272 4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



S.L.


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